DR DZUL KHAINI HJ HUSAIN & ORS v. DIRECTOR OF LANDS AND MINES OFFICE (KUALA LUMPUR) & ANOR; MASS RAPID TRANSIT CORPORATION SDN BHD (PROPOSED INTERVENER) (NO 2)

HIGH COURT MALAYA, KUALA LUMPUR
HANIPAH FARIKULLAH J
[JUDICIAL REVIEW (APPLICATION FOR DISCOVERY)
NO: WA-25-7-01-2016]
26 SEPTEMBER 2016

CIVIL PROCEDURE: *Discovery – Documents – Judicial review – Validity of acquisition of land – Application for discovery of specific documents – Whether documents necessary and relevant to judicial review proceedings – Whether release of documents compromised security of project*

The whole land under the Ampang Park Shopping Centre ('the AP') was compulsorily acquired for the Mass Rapid Transit project. The applicants were the registered owners of 62 stratified properties at the AP, respectively, seeking to challenge the decision-making process of the respondents in acquiring the AP. In this application, the applicants sought discovery of certain documents, among others, the detailed technical plans, specifications and drawings. In support of their application, the applicants submitted that these documents were relevant in determining (i) whether the purported safety issue raised by the third respondents on the acquisition of the land area holds water; and (ii) whether the land acquisition of the stratified properties were larger than needed. The third respondent argued that the release of the technical plans, specifications and drawings might compromise the security of the MRT Ampang Park Station.

Held (dismissing application):

(1) The third respondent had duly produced all technical plans, specifications and drawings in support of the intended compulsory land acquisition process. These documents have been exhibited in the third respondent's affidavit in reply. They are technical plans, specifications, and drawings produced for the purposes of the public inspection exercise, which essentially set out the framework of the proposed construction and development of the MRT project. The detailed technical plans, specifications and drawings requested by the applicants were not necessary and relevant for the purposes of determining the applicants' judicial review proceedings. Furthermore, the release of any detailed technical plans, specifications and drawings might compromise the security of the MRT Ampang Park Station. (paras 10-11 & 13)

Case(s) referred to:
Datuk Amar James Wong Kim Min & Anor v. Pendaftar Pertubuhan [2006] 8 CLJ 106 HC ***(refd)***
Tan Sri Dato' Sri Khalid Abu Bakar (DIG) & Ors v. Muhammad Farid Muntalib [2015] 1 LNS 15 CA ***(refd)***

Legislation referred to:
Land Acquisition Act 1960, s. 8

For the applicants - Yee Jun Hong, Jason Ng Kau, Ng Boon Siong, Tan Zhang Wei, Ng Yew Wei, U Wai Bing & Tan Li Yue; M/s Jason Ng & Partners
For the respondents - Nik Haizie Azlin Nabidin; SFC
For the proposed intervener - Robert Lazar & Lai Wai Fong; M/s Shearn Delamore & Co

Reported by Najib Tamby

JUDGMENT

Hanipah Farikullah J:

Enclosure 35

[1] By this discovery application, the applicants are seeking for discovery of the following documents and/or documents relating to the following matters:

(i) the proposed Klang Valley Mass Rapid Transit project in respect of the Sungai Buloh-Serdang-Putrajaya Line (known as 'MRT Line 2');

(ii) the layout and land acquisition plans involving the said land;

(iii) the plan of the whole are of the said land, showing the designated lands, or parts;

(iv) technical plans, technical specifications, technical drawings and so on in respect of the construction of the MRT Line 2 project relating the said land; and

(v) all documents that relate to the acquisition of the said land, prayer (e) of the discovery application.

The Background Facts

[2] The 39 applicants are the registered owners of the 62 stratified properties at Ampang Park Shopping Centre ("Ampang Park"), respectively seeking to challenge the decision-making process of the respondents in acquiring Ampang Park.

[3] Pursuant to s. 8 of the Land Acquisition Act 1960 ("LAA 1960"), the second respondent has on 2 September 2015 gazetted that the whole land under the Ampang Park Shopping Centre ("the land") to be compulsory acquired for the MRT project.

[4] Learned counsel for the applicants contended that the specific documents will be relevant to determine whether the purported safety issue raised by the third respondent on the acquisition of the whole land area of the said land holds water. This will have determinative effect on the issue of whether the land acquisition of the stratified properties are larger than its area needed in breach of Land Acquisition Act 1960, notwithstanding that the MRT will only be built underground which only occupies about 30% of the land.

[5] Further, it was submitted for the applicants that the discovery of the specified document must be granted as it is relevant to the merit of the case.

[6] In support of its argument, learned counsel for the applicants referred to the case of *Tan Sri Dato' Sri Khalid Abu Bakar (DIG) & Ors v. Muhammad Farid Muntalib* [2015] 1 LNS 15; [2015] 2 MLJ 783.

Decision

[7] During case management of the present discovery application on 27 June 2016, learned counsel for the applicants confirmed that the applicants will not be seeking discovery of the items particularised in prayers (b) and (c) of the discovery application.

[8] The court was informed that the first and the second respondents have agreed to make available the documents particularised in prayer (b) and (c) of the discovery application. Hence, parties agreed that only the items stated in para. 5(d) of the discovery application, namely the technical plans, technical specifications and technical drawings remain in dispute.

[9] Learned counsel for the applicants clarified that para. 5(d) of the applicants' application relates to the detailed technical plans, technical specifications and technical drawings, other than the technical plans, technical specifications, and technical drawings already produced in the third affidavit in reply by the third respondent affirmed on 4 May 2016 (encl. 56).

[10] After hearing and submissions from the parties, I am satisfied that the third respondent had duly produced all technical plans, technical specifications and technical drawings in support of the intended compulsory land acquisition process at the material time, in particular, they can be found in exh. AM1, exh. AM2, exh. AM3, exh. AM4, exh. AM5, exh. AM6, exh. AM7, exh. AM8, exh. AM9 to the third respondent's affidavit in reply affirmed on 4 May 2016 (encl. 56). These are technical plans, technical specifications and technical drawings produced for the purposes of the public inspection exercise, which essentially set out the framework of the proposed construction and development of the MRT Ampang Park station.

[11] In my view, the detailed technical plans, technical specifications and technical drawings as requested by the applicants are not necessary and relevant for the purposes of determining this judicial review proceeding.

[12] In *Datuk Amar James Wong Kim Min & Anor v. Pendaftar Pertubuhan* [2006] 8 CLJ 106; [2004] 6 MLJ 235, Raus Sharif J (as His Lordship then was) held that on the facts of that case, it was improper to allow discovery as the discovery sought was not relevant since the respondent had averred that all documents pertaining to his decision-making process were before the court and that there was no evidence adduced by the applicants to show that the materials before the court were inaccurate or false. The court concluded that the discovery application was a fishing expedition instead.

[13] Further, I find that there is merit in the third respondent's contention that in any event, the third respondent is very concerned that the release of any detailed technical plans, technical specifications and technical drawings may compromise the security of MRT Line 2, in particular the MRT Ampang Park station.

Conclusion

[14] Based on the above reasons, prayer 5(d) of the applicants' application is dismissed.